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# State v. Hoyle Respondent's Brief Dckt. 44884

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LAWRENCE G. WASDEN  
Attorney General  
State of Idaho

PAUL R. PANTHER  
Deputy Attorney General  
Chief, Criminal Law Division

LORI A. FLEMING  
Deputy Attorney General  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44884
Plaintiff-Respondent,	)	
	)	Bonneville County Case No.
v.	)	CR-2016-2033
	)	
JEREMY KELLY HOYLE,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Hoyle failed to establish that the district court abused its discretion by denying his Rule 35 motion to reconsider its decision to order his sentence into execution, rather than place him on probation, upon imposing a unified sentence of 10 years, with two years fixed, for robbery?

Hoyle Has Failed To Establish That The District Court Abused Its Sentencing Discretion

The state charged Hoyle with robbery, with a deadly weapon enhancement. (R., pp.41-43.) Pursuant to a plea agreement, Hoyle pled guilty to robbery and the state dismissed the enhancement and agreed to recommend no more than three years for

the fixed portion of Hoyle's sentence. (R., pp.72-76.) The district court imposed a unified sentence of 10 years, with two years fixed. (R., pp.79-81.) Hoyle filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.88-89, 95-96.) Hoyle filed a timely notice of appeal. (R., pp.98-101.)

Hoyle asserts that the district court abused its discretion by denying his Rule 35 request to be placed on probation in light of his depression, family support, drug addiction and desire to participate in treatment, and because a drug treatment program is available. (Appellant's brief, pp.3-6.) Hoyle has failed to establish an abuse of discretion.

If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Hoyle must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id.

In support of his Rule 35 motion, Hoyle merely reiterated information that was available at the time of sentencing. The district court was aware, when sentencing Hoyle, of Hoyle's family support, his mental health and substance abuse issues, his desire to participate in substance abuse treatment, and that both inpatient and outpatient treatment programs (including treatment via the retained jurisdiction program) are available. (Tr., p.20, L.17 – p.22, L.24; p.25, L.16 – p.27, L.22; p.28, L.16 – p.29, L.10; PSI, pp.12-14, 19, 43-45, 48, 53-54.<sup>1</sup>) At the sentencing hearing, the district court

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<sup>1</sup> PSI page numbers correspond with the page numbers of the electronic file "PSI.pdf."

acknowledged these factors and set forth its reasons for imposing Hoyle's sentence and declining to place him on probation with community-based treatment. (Tr., p.29, L.23 – p.34, L.16 (Appendix A).)

At the hearing on Hoyle's Rule 35 motion, Hoyle renewed his request to be placed on probation with community-based treatment, stating that his mother was willing to help him get into and pay for the Teen Challenge residential treatment program in Oregon. (Tr., p.40, Ls.4-6.) This is arguably not "new" information, as Hoyle had previously verbalized his willingness to participate in a residential program (including the rider program), that he has support from his mother, and that he had funding for substance abuse treatment. (Tr., p.22, Ls.21-24; p.27, Ls.16-19; PSI, pp.14, 48-49.) Even if it were considered new information, the district court already determined, at sentencing, that probation with any community-based treatment option was not appropriate in light of the seriousness of the offense and Hoyle's criminal history, which necessitate a prison sentence to meet the goals of retribution, deterrence, and protection of society. (Tr., p.31, L.21 – p.34, L.2.) "When a court reasonably determines that other sentencing objectives outweigh the goal of rehabilitation, the court does not abuse its discretion in denying a motion for leniency under Rule 35." State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998). In denying Hoyle's Rule 35 motion, the court adhered to its belief that the objectives of deterrence, retribution, and protection of society were the overriding factors in this case. (Tr., p.48, Ls.3-9; p.49, L.22 – p.50, L.8.) At the Rule 35 hearing, the district court articulated its reasons for denying Hoyle's Rule 35 motion. (Tr., p.47, L.7 – p.50, L.18 (Appendix B).) The state submits that Hoyle has failed to establish an abuse of discretion, for reasons more fully

set forth in the attached excerpts of the sentencing and Rule 35 hearing transcripts, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm the district court's order denying Hoyle's Rule 35 motion.

DATED this 15th day of August, 2017.

\_\_\_\_\_  
/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 15th day of August, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

KIMBERLY A. COSTER  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

\_\_\_\_\_  
/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

## APPENDIX A

1 and inspired -- and am inspired and moved with the stories and  
2 would like to start my own journey of recovery and reach some  
3 of my goals, which are being sober and remaining that  
4 sobriety; getting a good job, which I have done many times in  
5 the past, and keep employment;

6 Have a relationship with my children and be a  
7 good example in their lives and build a stronger relationship  
8 with my family because they have been there for me in the past  
9 and I want to be able to -- for them to rely on me as well;  
10 and also to get my GED, is some of my goals.

11 I'd appreciate your time and consideration on  
12 giving me a chance to accomplish these things that I -- I have  
13 stated. Thank you, your Honor.

14 THE COURT: All right. Well, thank you for  
15 that statement. I appreciate the time that you put into it  
16 and -- and providing that to the Court today.

17 Are you fully satisfied with the representation  
18 of your counsel?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: Counsel, then, is there any reason  
21 why we shouldn't proceed for -- to the sentence?

22 MR. GRANT: No, sir.

23 THE COURT: All right. Well, let me just begin  
24 my comments, Mr. Hoyle, by reflecting upon a few of the things  
25 that you had stated.

29

1 The first is I want to highlight the fact that  
2 you have a -- a journey ahead of you, and it's a journey of  
3 recovery. I think that there are reasons for optimism in your  
4 future.

5 And it's clear that you are in a better place  
6 today than you were when the time the offense was committed.  
7 And much of that surrounds two areas of your life. Both need  
8 attention, and both are -- are challenges for you.

9 Mental health -- health -- and it's clear that  
10 you, as your counsel said, dialed in to now the appropriate  
11 medications that will help you be clear-minded and -- and  
12 thinking and -- and more appropriate in your decisions. And  
13 that is encouraging because you weren't on the -- on the day  
14 of the robbery.

15 And then, of course, the other thing, which  
16 these things go hand in hand together for -- ripe for  
17 destruction. And that includes substance abuse.

18 And the combination of those two challenges in  
19 your life I think resulted in what we saw in the robbery. It  
20 is a very significant offense.

21 As your counsel said, I think now there is a  
22 baseline. I think the time that you have served has been well  
23 spent in becoming clean and also in identifying the medication  
24 that will help you and -- and make decisions.

25 And so when we talk of a journey, your journey

30

1 began really upon your arrest. And it brings us to the  
2 courtroom today, and it will go into the future.

3 You know, regardless of what the Court does, I  
4 hope you continue to remind yourself that this is a journey.

5 And I read that you often like to spend time  
6 alone and that sometimes may have been a little disruptive to  
7 social norms and -- and relationships with people around you.

8 I'm pleased to see your dad here supporting  
9 you, and that's important.

10 And I think this whole process, this whole  
11 journey, gives you the opportunity to be aware of what will  
12 make you successful in the future.

13 You have a -- a number of children, five --  
14 five, I believe. And at your age, you know, they're dependent  
15 upon you in many ways.

16 Even if they're not immediately or haven't been  
17 immediately in your life, you -- you still have opportunities  
18 to be a father, to support them, and do those things that are  
19 necessary.

20 Your ISI score is significant at 42.

21 And there are four objectives that the Court  
22 must consider in fashioning a sentence. Protection of society  
23 is one. I'll save my comments for that in a moment.

24 To deter you from committing other offenses.

25 And you come before the Court with a number of offenses.

31

1 More -- some are more troubling than others.

2 The Court can move quickly through the tobacco  
3 and the alcohol charges. There is a DUI and a DWP. But it's  
4 more difficult as I look at a few of these others, including a  
5 battery. It was domestic-oriented.

6 You had one that was dismissed, I believe, and  
7 then -- and then the result on a domestic.

8 A malicious injury to property and a couple of  
9 paraphernalia offenses.

10 But one of the -- the things that troubles the  
11 Court is weapons. And a weapon was used in this case. And  
12 you have a conviction for exhibiting a firearm, and then there  
13 was a separate weapons offense as well.

14 So that concerns the Court as I try to address  
15 how can I deter you from committing other offenses. There --  
16 there will be a sentence I believe that does that.

17 And I can still accept what Mr. Grant said  
18 about the place that you're standing today.

19 But these two issues that I've shared with you  
20 that you're aware of -- mental health, substance abuse -- are  
21 ones that will remain with you probably throughout the rest of  
22 your life.

23 And -- and yet that's something that you can  
24 work through, as you have been most recently while in custody.

25 Your rehabilitation is important, and Mr. Grant

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1 has spent some time sharing with the Court the views that you  
2 and he have about success in the community.  
3 And then, lastly, punishment for the  
4 wrongdoing. And you've been in custody nine months, which is  
5 no short term. That's a significant amount of time.  
6 These are all factors that the Court considers  
7 in fashioning a sentence that I feel is appropriate.  
8 You -- you don't come before the Court free  
9 with prior offenses. Should you have, I believe the Court  
10 would have been more likely to grant the kinds of -- the kind  
11 of request that Mr. Grant is suggesting with opportunities in  
12 the community.  
13 But I can't do that really for two reasons.  
14 First, the prior history doesn't allow me to. I don't think I  
15 can satisfy deterrence with your history.  
16 And then number one is the nature of this  
17 offense is just aggravating enough that I believe, if you rob  
18 a retail business, that you will go to prison.  
19 And I -- I want you to know I'm acknowledging  
20 these redeeming things that are in your present state and what  
21 I believe in your future. And as I said earlier on, I think  
22 there's reasons for optimism.  
23 But as I still balance all of that against the  
24 nature of this offense -- a weapon used, a threat to an  
25 individual, not just to retrieve merchandise but to then

33

1 demand money -- brings the Court to the conclusion that there  
2 needs to be a prison sentence.  
3 And it -- it will be two years fixed followed  
4 by eight years indeterminate, for a unified sentence of ten  
5 years.  
6 There are court costs associated with this  
7 offense. There will be a \$1,000 fine. I'll have you  
8 reimburse the services of the public defender in the amount of  
9 \$300.  
10 And then restitution will be held open for a  
11 reasonable time to allow the State to produce that number. If  
12 there is a dispute, we'll have a hearing on it. If not, then  
13 that will be included in the judgment.  
14 You're well underway towards that fixed time.  
15 I want you to succeed. And I -- I wish you luck in your  
16 programming. Do you have any questions of your counsel or for  
17 me?  
18 (Sotto voce discussion.)  
19 MR. GRANT: No questions, your Honor.  
20 THE COURT: Okay. Thank you.  
21 Mr. Hoyle, let me, before you take off, advise  
22 you you have a right to appeal, 42 days from today, the  
23 judgment.  
24 You also have the right to a Rule 35, which is  
25 a plea for leniency if you think I've been too harsh or if

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1 I've sentenced you illegally. That would need to be filed  
2 within 120 days of today.  
3 And then, lastly, post-conviction relief is  
4 something you can visit with Mr. Grant about. That wouldn't  
5 expire until a year after the appeal expires.  
6 THE DEFENDANT: All right.  
7 THE COURT: Thank you.  
8 (Proceedings concluded.)  
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**RULE 35 HEARING**

**JANUARY 23, 2017**

1  
2  
3 THE COURT: The matter is CR-2016-2033, State  
4 of Idaho versus Jeremy Hoyle. And Mr. Hoyle is here with  
5 Mr. Grant for that Rule 35, and Mr. Dewey will be handling the  
6 argument on behalf of the State.  
7 I have the notes that I took in preparation for  
8 the sentencing along with notes I took at the sentencing and  
9 the presentence report.  
10 So, Mr. Grant.  
11 MR. GRANT: Thank you, your Honor. We have  
12 filed this motion asking for the Court to perhaps reconsider  
13 this matter and look at perhaps amending the sentence as a  
14 show of leniency towards Mr. Hoyle.  
15 And I think that there are a number of things  
16 that the Court could consider. Some of these were matters  
17 that were mentioned at sentencing, and I would certainly just  
18 bring them up as just reminders to the Court.  
19 And then there are some new -- there's some new  
20 information that we would raise to the Court as well.  
21 First, I would indicate that, as my dealings  
22 with Mr. Hoyle -- I got into this case a little bit late  
23 because there was a disqualification -- self-disqualification,  
24 I believe, of a judge.  
25 And so this Court inherited the matter after it

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## APPENDIX B

1 was a -- it was not treatment; it was a detox program.  
2 THE COURT: Detox? Okay.  
3 MR. GRANT: So -- so very different  
4 circumstance.  
5 THE COURT: Well, Mr. Hoyle, would you like to  
6 make a statement?  
7 THE DEFENDANT: You know, Mr. Grant, I think,  
8 has kind of covered a lot of -- of everything on there, you  
9 know. Actually, I'm not really for sure where to start.  
10 You know, I -- I just feel like I -- I would  
11 like the chance to -- to be able to, you know, do  
12 something and -- and prove myself, you know, that I could --  
13 you know, that I am better than all this and what I did do.  
14 You know, I mean, I understand that, yeah, I  
15 did, you know, do a robbery, and I did have a knife, you know.  
16 A lot of that -- I mean, I -- I was just on  
17 drugs. I -- you know, I wasn't intending on hurting anybody.  
18 I just needed money real quick, and that was it.  
19 I do realize that was, you know, a very wrong  
20 thing to do. But I would like a chance to do some kind of  
21 treatment.  
22 I have had an intensive patient treatment. I  
23 want to say, when I was 18 years old, I went to a rehab. I  
24 went to the detox center, which I placed myself in.  
25 And then I even went -- well, I was on the

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1 suboxone program from the Pearl Health for a year and a half  
2 also, you know, which, basically, that just got me off -- it  
3 got me off drugs, but it got me on -- hooked on the suboxones.  
4 You know, so once I -- I stopped doing the  
5 suboxones, you know, it was trading one -- a tit for tat, you  
6 know.  
7 THE COURT: Yeah.  
8 THE DEFENDANT: So I just feel like, if -- you  
9 know, this is the most time I've had clean for, I'd say,  
10 honestly, the last seven, eight years, you know.  
11 And every time I have been clean in my life,  
12 I've done very well for myself. I've held down a job, you  
13 know, had a family, everything.  
14 You know, when I've used drugs, I've basically  
15 lost everything and, you know, just kind of self-destruct my  
16 life and self-sabotage everything, it seems like.  
17 But I would really like a chance, you know --  
18 at the beginning of this, I was really hoping to get some kind  
19 of specialty court. I thought that would be really good for  
20 me to do.  
21 Even if I didn't get at the end of it the  
22 felony dismissed, I would be fine with that. But just to be  
23 able to go through the program of it I thought would be very  
24 good, you know.  
25 That's why I even suggested on sentencing

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1 probation, something that, you know, I can do so if -- if I do  
2 fail, you know, I know what I'm looking at and could go do the  
3 prison, you know.  
4 And that's pretty much all I have to say --  
5 THE COURT: Okay.  
6 THE DEFENDANT: -- I guess.  
7 THE COURT: Okay. Well, thank you for your  
8 statements, Mr. Grant and Mr. Dewey as well for your rec- --  
9 recommendations and also the opportunity the Court has to  
10 re-review the circumstances of this case.  
11 And I'll just begin by stating what I think is  
12 most influential in the words of Mr. Grant, and that is you  
13 are interested in making things right. That's his statement.  
14 And, frankly, I agree that that is your desire  
15 based upon his statement to me and also your statement to me  
16 and my observation of you today and also at the time of  
17 sentencing.  
18 And that's clear to me, and I'm happy to see  
19 that. Because we are here, and we were together at sentencing  
20 for a very serious offense. We can't look around that. Yes,  
21 it is your first felony.  
22 And while many first felony offenses result in  
23 diversions, Mr. Grant was credible in stating that this is  
24 different. I think you recognize that.  
25 THE DEFENDANT: Yes.

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1 THE COURT: That was clear in the Court's mind  
2 at the time of the sentence.  
3 And, in fact, I made, likely, the statement  
4 that, when you conduct a robbery, you're -- you're going to go  
5 to prison. And I -- I still think that that is the case.  
6 What I tried to do, as you can see in the  
7 sentence, compared to what the State was asking the Court to  
8 do was to recognize that statement that you made of making  
9 things right, being accountable, and -- and being productive.  
10 You have been in custody almost a year. I  
11 think probably approaching 11 months. Is that about right?  
12 THE DEFENDANT: Yeah.  
13 THE COURT: So you are near to halfway through  
14 the term that the Court required. I don't expect you to serve  
15 any more than the two years. I know that that decision is not  
16 this Court's. It will be the parole commission's.  
17 You expressed that you're better than all of  
18 this. And I can accept that.  
19 I just remind you that the objectives that the  
20 Court has at sentencing include deterrence to you and to  
21 others. And, unfortunately, given the nature of the offense,  
22 I just feel like my hands are tied.  
23 I see right in -- in the file as well the  
24 problem-solving court application. That would have been the  
25 one way I think to avoid what occurred.

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1 MR. GRANT: And, your Honor, because of the  
2 nature of the charge, it required -- a problem-solving court  
3 required special clearance from the prosecutor's office,  
4 which -- which I understand, with the nature of this charge,  
5 they were not --  
6 THE COURT: Okay.  
7 MR. GRANT: -- willing to give. So that's why a  
8 problem-solving court was not an opportunity.  
9 THE COURT: Yeah. So I guess it didn't get  
10 far -- as far down that path as you would have -- as you would  
11 have hoped.  
12 And -- and, again, I guess that's within their  
13 discretion, as Mr. Grant accepted and I -- I guess I do as  
14 well. The result is there's no problem-solving-court  
15 alternative available.  
16 And, you know, to some degree, I regret that.  
17 In another sense, I understand why -- why that is. And it's  
18 consistent with my view as -- of a robbery as well.  
19 You indicate that you were on drugs when this  
20 took place, and I accept that. Not wanting to hurt anyone,  
21 and I accept that.  
22 But I think we both can agree, when you are  
23 under the influence of the substances you were, we lose our  
24 judgment and we lose our control. And we cannot necessarily  
25 ensure that individuals won't get hurt.

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1 And at a minimum, an offense such as this --  
2 the weapon, you know, the demands -- it's very frightening.  
3 And, hence, the -- what I believe has appropriately been  
4 provided for a fixed term.  
5 And then to the indeterminate, you know, the  
6 second opportunity to review, it's half of what the State  
7 originally asked for. So I think I've given about every bit  
8 of consideration that I possibly could.  
9 I want you to do well. I want you to just  
10 hopefully put your head down and dig into whatever is  
11 available to you over the course of the next year and start  
12 anticipating your release.  
13 And when you're in the community, represent to  
14 yourself, the world, that you are continuing to be interested  
15 in making things right, as described by Mr. Grant.  
16 So I'm going to deny the Rule 35. It's with,  
17 you know, some degree of regret because I think you're on the  
18 right track. But it's the right decision in my mind.  
19 And so if the State would prepare the order.  
20 I wish you luck, Mr. Hoyle.  
21 THE DEFENDANT: All right. Thank you.  
22 (Proceedings concluded.)  
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24  
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